the phrase "in the presence * * * due regard must be had to the circumstances of each particular case. * * * If they sign within his hearing, knowledge, and understanding, and so near as not to be substantially away from him they are considered in his presence". The best expression of this view is found in *Aiken* v. *Weckerly,* 19 Mich. 482, where the court said that the testator must be "mentally observant of the specific act in progress." See also *In re Will of Hiram Allred,* 170 N. C. 153, L. R. A. 1916, C. 946; Ann. Cas. 1916 D, 788; *Riggs* v. *Riggs,* 135 Mass. 238. To say the least, the vision test is hardly consistent with itself. According to this test the statute is not satisfied if the testator could not move his head into the line of vision by reason of some infirmity; or could not see the act because his vision was obstructed by a curtain or the foot-board of his bed. *Gordon* v. *Gilmire,* 141 Ga. 347. Is not blindness as much an obstruction to the vision as a curtain or a board? Yet in one case the testator is afforded all the possible means of minimizing the possibility of fraud while in the other the testator is guaranteed only an imaginary safeguard. It would seem that the dissenting view attains more completely the "rational, practical construction" which the prevailing view asserts as the ideal. The principal case is supported by the case of *Piercy's Goods,* 1 Rob. Eccl. R. 278.

WILLS—REVOCATION—ADOPTIVE CHILD—"ISSUE."—The testator adopted a child in compliance with the provisions of the statute. He had no children by his first wife and remarried after the adoption. He then made his will. After his death a posthumous child of the second marriage was born. A section of the statute of wills read as follows: "That every last will and testament made when the testator had no issue living, wherein any issue he might have is not provided for or mentioned, if at the time of his death he leave a child, or children, or issue, or leave his wife enceinte of a child or children which shall be born, such will shall be void, and such testator be deemed to die intestate." The will was objected to in a caveat filed really on behalf of the adopted child. *Held,* that the will was void, having been revoked by force of the statute. The adopted child was not an "issue" within the meaning of the statute of wills, hence there was no living issue at the time of the making of the will. When the section of the statute of wills above mentioned was enacted there was no adoption statute and consequently adopted children could not have been intended to be included. Moreover, the adoption statute did not clothe the adopted child with all the legal incidents of a child born in lawful wedlock. *In re Book's Will,* 105 Atl. 878, (Prerog. Ct. of N. J., Nov., 1918).

When adoption by statute first came into practice the legislatures hesitated to endow the child with all the legal incidents of a natural born child. The attitude of the legislatures was restrictive hence the interpretation of the courts was also restrictive. To-day adoption is the common thing and that feeling of reluctance to put the adopted child on the same plane with the natural child is no longer present in the minds of the legislatures. But unfortunately the courts are one step behind the legislatures, as is often the case, and the restrictive interpretation still continues. It is only when the

statute is precisely explicit that the courts come round to the modern ideas about adoption. Thus, in Massachusetts the statute provided that the adopted child should be deemed for the purposes of inheritance "and all other legal consequences and incidents of the natural relation of parent and child" the child of the parents by adoption the same as if he had been born to them in lawful wedlock. Consequently, the court held in *Sewall* v. *Roberts*, 115 Mass. 262, that an adopted child was included within the term "children" in a voluntary settlement made long prior to the adoption. See also *In the Matter of Wardell*, 57 Cal. 484; *Flannigan* v. *Howard*, 200 Ill. 396, 59 L. R. A. 664. But the adoption statute in the principal case said nothing about the legal consequences and incidents of adoption being the same as if born in lawful wedlock; it merely enumerated certain rights consequent on the adoption-education, maintenance, and the rights of inheritance and the distribution of the personal estate as if born to the parents in lawful wedlock. The court admitted that the adopted child would come within the terms of a descent or distribution statute so long as the adoptive statute gave the child the right to take; however, the reason which allowed this would not apply to cases arising under the statute of wills. This discrimination is hardly warranted. There is no apparent reason why the court should conclude that the legislature intended to apply a different rule as to the rights of an adopted child in the case of testacy from the case of intestacy. It all hinges around the interpretation of the word "inheritance" used in the adoptive statutes. In view of the modern ideas about adoption, this narrow construction fails to reach the real intent of the legislature. On authority the principal case is correct, and indeed has little opposition to dispute it. Let us hope for a case which meets the issue squarely.